

# HOUSE . . . . . No. 1376

By Mr. Petersen of Marblehead, petition of Douglas W. Petersen and others for legislation to provide for sustainable developments for the protection of natural resources in the Commonwealth. Environment, Natural Resources and Agriculture.

## The Commonwealth of Massachusetts

### PETITION OF:

Douglas W. Petersen  
Michael E. Festa

Anthony J. Verga  
Thomas M. Stanley

In the Year Two Thousand and Five.

### AN ACT RELATIVE TO MASSACHUSETTS COMMUNITIES FUTURES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. *Whereas*, The land and waters within the Com-  
2 monwealth have distinct natural, scientific, historical, scenic, cul-  
3 tural, architectural, archeological, recreational, economic,  
4 agricultural and other values;

5 *Whereas*, The obligation to protect the many valuable resources  
6 of the Commonwealth is shared by local, regional, state and  
7 national governments, civic organizations, businesses and the gen-  
8 eral public;

9 *Whereas*, Such resources are being adversely affected by a lack  
10 of effective planning designed to bring about coordination and  
11 cooperation among the various levels of government, the private  
12 sector, and the general public concerning land use decisions and  
13 planning for sustainable development in a manner that protects the  
14 environment and the economic well-being of the Commonwealth;

15 *Whereas*, The common good of the Commonwealth is served  
16 by promoting sustainable development in order to provide alterna-  
17 tives to low-density development and sprawl;

18     *Whereas*, Damage to natural, cultural, historic and other  
19 resources and to the economy of the Commonwealth may be  
20 avoided or mitigated by proactive and coordinated planning for  
21 sustainable development;

22     *Whereas*, Sustainable development will be promoted when state  
23 government entities and regional planning agencies coordinate  
24 with each other and with local governments concerning land use  
25 planning and development in a manner that fosters sustainability;

26     *It is hereby resolved*, That in order for sustainable development  
27 to be successful, land use planning must be as comprehensive as  
28 possible and address multiple needs of communities including, but  
29 not limited to: natural, cultural and other resources; housing; eco-  
30 nomic development, open space and recreation; infrastructure  
31 including services and facilities; and transportation.

1     SECTION 2. Chapter 41 of the General Laws, as so appearing,  
2 is hereby amended by striking out section 81D and inserting in  
3 place thereof the following:—

4     Section 81D.

5     (a). Definitions.

6     In this Section, unless the context otherwise requires, the fol-  
7 lowing words shall have the following meaning:

8     (1) “Approved Plan”, is one that has been determined, during a  
9 comprehensive review by the applicable RPA under section (d) of  
10 this Act, to be both complete and sustainable, and which has also  
11 received local approval under section (e) of this Act.

12    (2) “Completion Review”, part of the Comprehensive Review  
13 conducted by the applicable RPA under section (d) of this Act of a  
14 Plan submitted by a municipality to the applicable RPA. The com-  
15 pletion review portion of the Comprehensive Review is conducted  
16 to determine whether a submitted Plan addresses each required  
17 Plan element described in subsection (c) of this Act and enables  
18 the municipality to receive the balance of any plan preparation  
19 grants due to it under subsection (h).

20    (3) “Certification of Plan”, refers to certification by the applic-  
21 able RPA of a municipal Plan in accordance with subsection (f),  
22 following submittal by the municipality of an approved Plan con-  
23 taining finalized land use regulations.

24 (4) “Director”, the Director of the Department of Housing and  
25 Community Development (DHCD).

26 (5) “Land Use Regulations”, regulations, administered in whole  
27 or in part by a municipality, which materially affect the purposes  
28 of this Act, such as zoning, subdivision, wetlands, public health  
29 and transportation.

30 (6) “Local Comprehensive Plans”, (Plans), plans developed and  
31 implemented by municipal governments in accordance with this  
32 Section. Local Comprehensive Plans may be new plans or may be  
33 existing Master Plans that have been revised or modified in accor-  
34 dance with this section.

35 (7) “Local Legislative Body”, is Town Meeting, City Council,  
36 Board of Aldermen, or other local legislative bodies.

37 (8) “Plan Implementation Grants and Financial Assistance”  
38 refers to financial assistance, including grant provisions and the  
39 establishment of a dedicated fund, as described in subsection (i) of  
40 this section. Said assistance shall be provided to municipalities  
41 with Certified Plans to assist said municipalities with the imple-  
42 mentation of the Plans.

43 (9) “Regional Planning Agencies”, (RPA) refers to organiza-  
44 tions which are multijurisdictional and address issues that cross  
45 municipal and/or town borders. Regional Planning Agencies are  
46 established under the laws of the Commonwealth.

47 (10) “Regional Policy Plans”, (RPPs) are plans developed and  
48 implemented by RPAs in accordance with Chapter 40B of the  
49 General Laws and with subsection (e) of this Act.

50 (11) “Secretary”, means the Secretary of the Executive Office  
51 of Environmental Affairs (EOEA).

52 (12) “Sprawl”, is unmanaged, unsustainable development.

53 (13) “State Sustainable Spending Plan”, is a plan developed by  
54 state agencies as specified in subsection (k) of this section.

55 (14) “Sustainable Development Municipal Grant Fund”, is a  
56 Fund established to provide grants to municipalities for activities  
57 relating to the development and preparation of Local Comprehen-  
58 sive Plans. The Fund is created and administered in accordance  
59 with subsection (h) of this section.

60 (15) “Sustainability Review”, a review conducted of a Local  
61 Comprehensive Plan (Plan) by the applicable RPA in accordance  
62 with subsection (g) of this Act.

63 (16) “Sustainable Development”, is development purposefully  
64 designed to bring about efficient, safe, healthy, prosperous and  
65 livable communities (local, regional, and state) while simultane-  
66 ously maintaining and enhancing the environment, the natural  
67 resource base and the ongoing functioning of natural ecosystems  
68 that are fundamental to sustaining life for current as well as future  
69 generations.

70 (b). Purposes.

71 The purposes of this section are as follows:

72 (1) to protect lands, water, and air within the Commonwealth in  
73 order to ensure the preservation of distinct natural, scientific, his-  
74 torical, scenic, cultural, architectural, archeological, recreational,  
75 economic, and agricultural resources;

76 (2) to recognize the shared obligation of the local, regional, and  
77 state governments and businesses and the general public to protect  
78 the many valuable resources of the Commonwealth;

79 (3) to prevent the many resources of the Commonwealth from  
80 being adversely affected by a lack of effective planning designed  
81 to bring about coordination and cooperation among the various  
82 levels of government, the private sector, and the general public  
83 concerning land use decisions and planning for sustainable devel-  
84 opment;

85 (4) to encourage the common good of the Commonwealth by  
86 promoting sustainable development in order to provide alterna-  
87 tives to low-density development and sprawl;

88 (5) to encourage state government entities and regional plan-  
89 ning agencies to coordinate with each other and with local govern-  
90 ments on the plan in its developmental or draft stages;

91 (6) to understand that for sustainable development to be suc-  
92 cessful, land use planning must be comprehensive and address  
93 multiple needs of communities, regions, and the state including:  
94 the preservation of natural, cultural and other resources; the pro-  
95 motion of sustainable economic development; and the provision  
96 of necessary services, facilities and infrastructure.

97 (c). Local Comprehensive Plans.

98 A planning board, established in a municipality under section  
99 eighty-one A, is encouraged to develop, in consultation with other  
100 elected and appointed municipal boards, a Local Comprehensive  
101 Plan of such municipality or parts thereof as said board(s) may

102 deem advisable and from time to time may extend or perfect such  
103 plan. The plan, at a minimum, should be revised and/or updated,  
104 every five years.

105 A Municipality which intends to develop a Plan as described in  
106 this subsection may apply for a grant to assist with costs associ-  
107 ated with Plan development and preparation in accordance with  
108 subsection (h) of this section.

109 Such plan shall be a statement, through text, maps, illustrations  
110 or other forms of communication, that is designed to provide a  
111 basis for decision making regarding the long-term physical devel-  
112 opment of the municipality. The Local Comprehensive Plan shall  
113 be internally consistent in its policies, forecasts and standards, and  
114 shall include the following elements:

115 (1) Goals and policies statement which identifies the goals and  
116 policies of the municipality to protect its natural resources and to  
117 provide for its growth and development. Each community shall  
118 conduct an interactive process to determine municipal values and  
119 goals and to identify patterns of development that will be consis-  
120 tent with these goals. Said municipality must ensure that the  
121 planned development process is open, public and broadly partici-  
122 patory. All interested parties shall be encouraged to participate  
123 from the beginning of the process and to comment on the plan in  
124 its developmental or draft stages. Municipalities are encouraged to  
125 involve interested parties including, but not limited to: residents  
126 of the municipality; municipal officials, boards, and commissions;  
127 business and industry representatives; environmental and public  
128 health groups; watershed area representatives and teams; conser-  
129 vation commissions; affected RPAs; representatives of abutting  
130 municipalities.

131 (2) Land use plan element including a land use plan map illus-  
132 trating present land uses and designating the proposed distribu-  
133 tion, location, and interrelationship of public and private land  
134 uses. This element shall relate population density and building  
135 intensity to the capacity of land available and to planned facilities  
136 and services.

137 (3) Natural and cultural resources element which provides an  
138 inventory of the significant natural, cultural, and historic resource  
139 areas of the municipality and policies and strategies for the pro-  
140 tection and management of such areas.

141 (4) Watershed protection element which identifies water  
142 resources contained in whole or in part within a municipality,  
143 including resources and problems relating to water supply,  
144 wildlife habitat, and the impact of development activities on these  
145 watershed resources.

146 (5) Housing element which identifies and analyzes existing and  
147 forecasted housing needs and objectives including programs for  
148 the preservation, improvement and development of housing,  
149 including affordable housing. This element shall identify policies  
150 and strategies to provide a balance of local housing opportunities  
151 for all citizens.

152 (6) Economic development element which identifies policies  
153 and strategies for the expansion or stabilization of the local eco-  
154 nomic base and the promotion of employment opportunities.

155 (7) Open space and recreation element which provides an  
156 inventory of recreational resources and open space areas of the  
157 municipality and policies and strategies for the management and  
158 protection of such resources and areas.

159 (8) Services and facilities element which identifies and ana-  
160 lyzes existing and forecasted needs for facilities and services used  
161 by the public, including, but not limited to, those related to: edu-  
162 cation, public safety, water and sewer services, energy demands  
163 and energy conservation, and other utilities.

164 (9) Transportation element which identifies existing and pro-  
165 posed intermodal transportation systems including roads, mass  
166 transit, pedestrian, bicycle, and waterways, as well as the impacts  
167 of such systems on land uses within the municipality.

168 (10) Implementation program element which defines and  
169 schedules the specific municipal actions, including the identifica-  
170 tion of the anticipated costs and revenues, associated with each  
171 element of the plan. This element shall specify the process by  
172 which the municipality's regulations shall be amended so as to be  
173 consistent with the Plan.

174 Such a Plan shall be developed, and may be added to or modi-  
175 fied from time to time, by presentation to and approval by Town  
176 Meeting, City Council, or other legislative body. Any additions to,  
177 modifications of, or amendments to the Plan must be presented to  
178 and approved by Town Meeting, City Council, or other legislative  
179 body. Such Plan or Plan modifications shall, upon approval so

180 described, shall be made part of the public record and a copy of  
181 such Plan or Plan modifications shall be submitted to the Depart-  
182 ment of Housing and Community Development. The Plan and any  
183 modifications to the Plan shall be filed with the office of the clerk  
184 of the municipality.

185 A municipality which has an established master or study plan  
186 under section eighty-one A and applies for a state grant from the  
187 Commonwealth, shall prepare and keep on file within such munic-  
188 ipality an economic development supplement; provided, however,  
189 that such municipality shall not be required to prepare such sup-  
190 plement if such municipality has a supplement on file. Such sup-  
191 plement shall be at least one page in length and shall contain the  
192 goals of the municipality or town with respect to industrial or  
193 commercial development, affordable housing, and preservation of  
194 parks and open space.

195 To the extent that one or more of the elements of the Plan is  
196 already addressed in another plan, such as an Open Space and  
197 Recreation Plan, such plan(s) may be included as a component of  
198 the Plan in order to satisfy that particular element of the Plan.

199 (d). Comprehensive Review of Plan.

200 A municipality shall submit its Plan to the applicable RPA for a  
201 Comprehensive Review as to the completion and the sustainability  
202 of the Plan. The RPA shall, within 60 days of receipt of a Plan,  
203 prepare and submit to the municipality a written review of the  
204 Plan that shall include a determination as to whether the Plan is  
205 complete and sustainable in accordance with this subsection. The  
206 RPA shall also include in the review, language specifically identi-  
207 fying any deficiency or omission with respect to each required  
208 element described in subsection (c) of this Act and each criterion  
209 described in this subsection. The review shall include, where  
210 appropriate, suggestions or guidance as to how said omissions or  
211 deficiencies may be rectified.

212 (1) A Plan shall be deemed both complete and sustainable if the  
213 applicable RPA is able to ascertain the following:

214 (i) for the purpose of determining that said Plan is complete,  
215 that each of the elements required in subsection (c) of the Act is  
216 included in the Plan; and

217 (ii) for the purpose of determining that said Plan is sustainable,  
218 that each of the criteria described in this section, is included in the  
219 Plan.

220 (2) A Plan is sustainable if the Plan satisfies each of the fol-  
221 lowing criteria:

222 (i) said Plan is designed to bring about efficient, safe, healthy,  
223 prosperous and livable communities (local, regional, and state)  
224 while simultaneously maintaining and enhancing the environment,  
225 the natural resource base and the ongoing functioning of natural  
226 ecosystems that are fundamental to sustaining life for current as  
227 well as future generations;

228 (ii) said Plan is compatible with the approved Plans of abutting  
229 municipalities and with the relevant RPP, if adopted; and

230 (iii) the submitting municipality has proposed appropriate land  
231 use regulations necessary to implement the elements of said Plan.  
232 In order for the municipality to receive Certification from the  
233 applicable RPA, enabling municipality to be eligible for financial  
234 assistance under subsection (i) of this section, said municipality  
235 shall satisfy the requirements of Certification as described in sub-  
236 section (f) of this section.

237 (3) Upon receipt by a municipality of a written statement from  
238 the applicable RPA as part of the Comprehensive Review that the  
239 Plan of the municipality is complete, the municipality may apply  
240 to EOEa for the remaining balance of the Plan preparation grant  
241 awarded to it in accordance with subsection (h) of this Section. A  
242 copy of said written statement of completion shall be filed with  
243 the office of the clerk of the town or city.

244 (e). Local Approval of Plan.

245 (1) Upon receipt of a Plan that has undergone a Comprehensive  
246 Review by the applicable RPA, the submitting municipality may  
247 present such Plan for approval to Town Meeting, City Council, or  
248 other legislative body. Any additions to, modifications of, or  
249 amendments to the Plan may be presented to and approved by  
250 Town Meeting, City Council, or other legislative body.

251 (2) A Plan shall not be in effect until:

252 (i) the Plan has undergone a Comprehensive Review in accor-  
253 dance with subsection (d) of this section and has been determined  
254 to be complete (however, the Plan need not be determined to be  
255 sustainable in order to be in effect); and



256 (ii) the Plan has received local approval in accordance with this  
257 subsection. Notice from the applicable RPA that a Plan has been  
258 determined to be complete shall be filed with the office of the  
259 applicable municipality.

260 (f). Certification of Plan by RPA.

261 (1) Upon approval of a Plan that has undergone a comprehen-  
262 sive review in accordance with subsection (d) of this Act, the  
263 municipality may submit the approved plan, including the final-  
264 ized land use regulations required under subsection (c), to the  
265 applicable RPA for certification that the Plan is complete and sus-  
266 tainable.

267 (2) The RPA shall state, in writing, that the Plan is certified as  
268 complete and sustainable. The municipality shall, upon receipt of  
269 the written certification, file such certification with the office of  
270 the clerk of the municipality.

271 (3) If a Plan is determined by the RPA to be insufficient for cer-  
272 tification, the RPA must notify, in writing, the municipality that  
273 the Plan is insufficient for certification and shall specify, in detail,  
274 the reasons for such insufficiency. The municipality shall first  
275 attempt to rectify or address the Plan insufficiency through con-  
276 sultation with the RPA. If the municipality is unable to rectify or  
277 address the Plan insufficiency and to obtain a certification, the  
278 municipality may appeal such denial of certification in accordance  
279 with subsection (g) of this section.

280 (4) Upon receipt by a municipality of written certification in  
281 accordance with this subsection, the municipality may apply for  
282 financial assistance in accordance with subsection (i) of this sec-  
283 tion. No municipality may be eligible for said financial assistance  
284 under subsection (i) unless said municipality has received from  
285 the applicable RPA a written certification that the Plan is complete  
286 and sustainable in accordance with this subsection and has sub-  
287 mitted a copy of said certification to the Secretary and the  
288 Director.

289 (g). Municipal Appeals of Comprehensive Review Decisions.

290 (1) A municipality may appeal a decision by an RPA that a Plan  
291 is either incomplete or is not sustainable in accordance with sub-  
292 section (d) of this section; or is not sufficient for the purposes of  
293 certification under subsection (f) of this section.

294 (2) Appeals under this Act shall be made first to EOEa. EOEa  
295 shall develop a process for hearing and deciding appeals from  
296 municipalities under this Act. Upon receipt by a municipality of a  
297 decision rendered by EOEa, pursuant to an appeal made in accor-  
298 dance with this subsection, said municipality may, if aggrieved by  
299 said decision, appeal to any court of competent jurisdiction as pro-  
300 vided for by the laws of the Commonwealth.

301 (3) A municipality may elect, in lieu of appealing a determina-  
302 tion by the applicable RPA that a Plan is either incomplete, is not  
303 sustainable, or is insufficient for certification under this Act, to  
304 modify or amend the Plan in order to address the stated deficien-  
305 cies in the original Plan. The municipality may resubmit the Plan  
306 to the RPA for second Comprehensive Review in accordance with  
307 the provisions governing the original comprehensive review as  
308 described in subsection (d) of this section.

309 (h). Plan Preparation Grants for Municipalities.

310 There is hereby established and set up on the books of the  
311 Commonwealth a Sustainable Development Municipal Grant  
312 Fund, into which shall be credited monies contributed by the  
313 Commonwealth including any appropriations or other monies  
314 authorized by the general court and specifically designated to be  
315 credited to said Fund.

316 The Fund shall be administered by the Secretary. Amounts  
317 credited to said Fund shall be provided as grants to municipalities  
318 for activities relating to the development and preparation of Plans  
319 under this Act.

320 The Secretary shall adopt regulations establishing the grant pro-  
321 gram created under this Section of the Act including, but not lim-  
322 ited to: the factors to be used by EOEa in determining the amount  
323 of the grant funds that will be awarded to each municipality; an  
324 application process for municipalities to use to apply for grant  
325 funds; and provisions governing the funding of RPAs in the con-  
326 ducting of RPA responsibilities under this Act. Factors to be used  
327 by EOEa in determining the amount of grant funds to be provided  
328 to each municipality shall include, but not be limited to: com-  
329 plexity of the planning issues confronting each municipality; and  
330 the capacity of each municipality to fund the planning process.  
331 Regulations shall also create an incentive program for multimu-  
332 nicipal planning.

333 \$35,000,000 shall be appropriated to the Fund for disbursement  
334 as grants to municipalities and to EOEA for the development and  
335 preparation of Plans encouraged to be prepared under this Act.

336 (i). Plan Implementation Grants and Financial Assistance.

337 Sustainability Grant Incentives for Municipalities.

338 Each agency of the Commonwealth that allocates or appropri-  
339 ates funds to municipalities for any authorized program for which  
340 the Commonwealth provides an allocation or appropriation shall  
341 incorporate into its existing methodologies for allocating and/or  
342 appropriating fund, a methodology for establishing priority for the  
343 allocating or appropriating of said funds to municipalities that  
344 have Certified Plans. Said methodology for prioritizing the alloca-  
345 tion or appropriation of funds shall be in effect by 2005. In addi-  
346 tion, each agency of the Commonwealth shall also develop a  
347 methodology by which each municipality that has a Certified Plan  
348 shall be eligible to receive a reduction in the amount of matching  
349 funds that is otherwise required to be paid by said municipality for  
350 any authorized program for which the Commonwealth provides a  
351 matching allocation or appropriation. Said methodology for  
352 reducing the amount of matching funds otherwise required to be  
353 paid by a municipality shall be in effect by 2005.

354 (j.) State Zoning and Planning Incentives.

355 (l) To enable each participating Municipality to propose amend-  
356 ments to its land use regulations necessary to implement the ele-  
357 ments of its proposed Plan sufficient to meet the requirements of  
358 Section (d)(2)(iii), the following provisions of chapters 40A and  
359 41 are amended as hereinafter provided to increase the zoning,  
360 subdivision control and planning authority of each participating  
361 Municipality if it has adopted a Plan which has become an  
362 Approved Plan.

1 SECTION 3. Chapter 40A of the General Laws is hereby  
2 amended by inserting after section 1 the following section:—

3 40A:2. General Purposes of Zoning Ordinances and By-laws

4 (a) The purpose of this Zoning Act is to provide guidance to  
5 municipalities in their regulation of land use, growth, and devel-  
6 opment through the exercise of home rule powers conferred by  
7 article 89 of the Massachusetts constitution. Except as hereinafter  
8 provided, cities and towns may adopt zoning ordinances and by-

9 laws in furtherance of the purposes contained in this section for  
10 the benefit of their present and future inhabitants to the full extent  
11 of the powers of such cities and towns, whether such power is  
12 independently authorized by the constitution of the Common-  
13 wealth or hereby the general court incident to power granted to it  
14 by the constitution. The Commonwealth shall limit these powers  
15 only where necessary to ensure consistency in zoning and promote  
16 regional and statewide interests as specifically provided herein.

17 (b) This Zoning Act is intended to encourage zoning ordinances  
18 and by-laws that advance the following public purposes of the  
19 Commonwealth, each with equal priority and numbered for refer-  
20 ence purposes only. The general court recognizes that cities and  
21 towns may advance some or all of the purposes listed below or  
22 may advance other purposes not listed below as they deem appro-  
23 priate.

24 (1) Implementation of a plan adopted by the city or town under  
25 section eighty-one D of chapter forty-one.

26 (2) Achievement of a balance of housing choices, types and  
27 opportunities for all income levels and groups, to assure the  
28 health, safety and welfare of all citizens and their rights to afford-  
29 able, accessible, safe, and sanitary housing.

30 (3) Orderly and sustainable growth and development which rec-  
31 ognizes:

32 (i) the goals and patterns of land use contained in a plan  
33 adopted by the city or town under section eighty-one D of chapter  
34 forty-one;

35 (ii) the natural characteristics of the land, including its suit-  
36 ability for use based on soil characteristics, topography, and sus-  
37 ceptibility to surface or groundwater pollution;

38 (iii) the values and dynamic nature of watersheds, coastal and  
39 freshwater ponds, the shoreline, and freshwater and coastal wet-  
40 lands;

41 (iv) the values of unique or valuable natural resources and fea-  
42 tures;

43 (v) the availability and capacity of existing and planned public  
44 and/or private services and facilities;

45 (vi) the need to balance the “built” environment with the “nat-  
46 ural” environment; and

47 (vii) the use of innovative development regulations and tech-  
48 niques such as development agreements, impact fees, inter-munic-  
49 ipal transfers of development rights, agricultural zoning,  
50 inclusionary zoning, mediation and dispute resolution, and urban  
51 growth boundaries.

52 (4) Control, protection or abatement of air, water, groundwater,  
53 noise and light pollution, and soil erosion and sedimentation.

54 (5) Protection of the natural, historic, cultural, aesthetic, and  
55 scenic character of the city or town or areas therein.

56 (6) Preservation and promotion of agricultural production,  
57 forestry, aquaculture, and open space.

58 (7) Protection of the environment and natural resources,  
59 including but not limited to farmland, forestland, water quality  
60 and quantity, shore lands, ridgelines, recreational resources, open  
61 spaces, special habitats and ecosystems and other qualities of the  
62 environment and natural resources set forth in article 97 of the  
63 Massachusetts constitution.

64 (8) Protection of public investment in transportation, water,  
65 storm water management systems, sewage treatment and disposal,  
66 solid waste treatment and disposal, schools, recreation, public  
67 facilities, open space, and other public requirements.

68 (9) Improvement and expansion of existing infrastructure and  
69 construction of new infrastructure in support of a plan adopted by  
70 the city or town under section eighty-one D of chapter forty-one  
71 and the purposes listed herein.

72 (10) An energy efficient, convenient and safe transportation  
73 infrastructure with as wide a choice of modes as practical,  
74 including, wherever possible, maximal access to public transit  
75 systems.

76 (11) Sustained or enhanced economic viability of the commu-  
77 nity and the region.

78 (12) Coordination of land uses with contiguous municipalities,  
79 other municipalities, the state, and other agencies, as appropriate,  
80 especially with regard to resources and facilities that extend  
81 beyond municipal boundaries or have a direct impact on that  
82 municipality.

83 (13) Accommodation of regional growth in a fair and equitable,  
84 but sustainable manner among municipalities.

85 (14) Efficient, fair and timely review of development proposals,  
86 to clarify and expedite the zoning approval process.

87 (15) Effective procedures for the administration of the zoning  
88 ordinance or bylaw, including, but not limited to, variances, spe-  
89 cial permits, other locally-adopted zoning permits, reviews or pro-  
90 cedures, and, where adopted, procedures for modification.

91 (16) Protection of the public health, safety, and general welfare.

92 (17) A range of uses and intensities of use appropriate to the  
93 character of the city or town and reflecting current and expected  
94 sustainable future needs.

95 (18) Safety from fire, flood, and other natural or man-made dis-  
96 asters.

97 (19) High level of quality in the design and development of pri-  
98 vate and public facilities.

99 (20) Conservation of the value of land and buildings.

100 (21) Conservation and enhancement of community amenities.

101 (22) Efficiency in energy usage and the reduction of pollution  
102 from energy generation, including the promotion of renewable  
103 energy sources and associated technologies.

1 SECTION 4. Section 3 of chapter 40A of the General Laws, as  
2 appearing in the 2000 Official Edition, is hereby amended by  
3 inserting, after the word “the”, in line 25, the following word:—  
4 minimum.

1 SECTION 5. Said section 3 of said chapter 40A, as so  
2 appearing, is hereby further amended by striking out, in lines 26-  
3 34 inclusive, the words “nor shall any such ordinance or by-law  
4 prohibit, regulate or restrict the use of land or structures for reli-  
5 gious purposes or for educational purposes on land owned or  
6 leased by the commonwealth or any of its agencies, subdivisions  
7 or bodies politic, or by a religious sect or denomination, or by a  
8 nonprofit educational corporation; provided, however, that such  
9 land or structures may be subject to reasonable regulations con-  
10 cerning the bulk and height of structures and determining yard  
11 sizes, lot area, setbacks, open space, parking and building cov-  
12 erage requirements.”.

1     SECTION 6. Said section 3 of said chapter 40A, as so  
2     appearing, is hereby further amended by striking out the third  
3     paragraph and inserting in place thereof the following para-  
4     graph:—

5     Zoning ordinances or by-laws shall not prohibit the use of land  
6     or structures thereon for: a) educational purposes on land owned  
7     or leased by the Commonwealth or any of its agencies, subdivi-  
8     sions or bodies politic or by a nonprofit educational corporation;  
9     b) religious purposes by a religious sect or denomination; c) the  
10    purposes of operating a child care facility or d) the purposes of  
11    operating a community residential program. As used in this sec-  
12    tion the following words shall have the following meanings: a)  
13    “educational purposes” means public and nonprofit private pri-  
14    mary, secondary and higher educational purposes; b) “child care  
15    facility” means a day care center or school age child care pro-  
16    gram, as those terms are defined in section 9 of chapter twenty-  
17    eight A; c) “community residential program” means a residential  
18    facility licensed by the Commonwealth to provide care or shelter  
19    or supervision or education to a maximum of eight (8) individuals  
20    with a mental or physical disability or to victims of crime, of  
21    physical or mental abuse, or of neglect in a small-scale residential  
22    setting with on-site or off-site supervision. The land or structures  
23    used for such purposes may, however, be subject to reasonable  
24    regulations regarding the bulk and height of structures, yard sizes,  
25    frontage, lot area, building coverage requirements, setbacks, floor  
26    area ratio, parking, access and egress, lighting, drainage, land-  
27    scaping, buffering and open space, and similar matters. Compli-  
28    ance with such regulations may be determined as provided by  
29    ordinance or by-law in each city or town, including through site  
30    plan review under which reasonable conditions, safeguards, and  
31    limitations to mitigate the impact of a specific use of land or  
32    structures on the neighborhood may be imposed pursuant to sec-  
33    tion seven A of this chapter. In addition, the application of such  
34    regulations to particular land or structures used for such purposes  
35    may be waived in whole or in part by special permit, and reason-  
36    able conditions may be imposed as part of the special permit. The  
37    waiver may be granted if the special permit granting authority  
38    finds, based upon the evidence presented by the person seeking  
39    the waiver, that the waiver will not result in substantially more

40 detriment to the neighborhood than the use of the particular land  
41 or structures for such purposes without the waiver.”

1 SECTION 7. Section 5 of said chapter 40A, as so appearing, is  
2 hereby amended by inserting, after the tenth paragraph, the fol-  
3 lowing paragraph:—

4 A zoning ordinance or by-law adopted or amended under this  
5 chapter shall not be inconsistent with a plan prepared by the city  
6 or town under section eighty-one D of chapter forty-one. Said  
7 ordinances or by-laws shall provide that in the instance of uncer-  
8 tainty in the construction or application of any section therein, the  
9 ordinance or bylaw shall be construed in a manner that will fur-  
10 ther the implementation of, and not be contrary to, the goals, poli-  
11 cies and applicable elements of said plan. This paragraph shall not  
12 become effective until five years after it is enacted in the General  
13 Laws.

1 SECTION 8. Chapter 40A of the General Laws is hereby  
2 amended by striking out section 6 and inserting in place thereof  
3 the following section:—

4 40A:6. Applicability of Zoning Ordinances and By-laws

5 40A:6A. Nonconforming Lots, Structures and Uses

6 (a) Residential Lot Exemption

7 Increases in lot area, frontage, width or depth, or building set-  
8 back requirements of a zoning ordinance or by-law shall not apply  
9 to a lot for single- or two-family residential use which immedi-  
10 ately prior to the effective date of the zoning amendment that ren-  
11 dered the lot nonconforming:

12 (1) was shown or described as a separate lot on a recorded plan  
13 or deed or on an assessors map or plat and has access to and  
14 frontage on an existing public way, or if not, to a way of sufficient  
15 width, grade and construction to provide safe access to such lot as  
16 the planning board or its designee may determine; and

17 (2) conformed to the then existing lot area, frontage and lot  
18 width or depth requirements; and

19 (3) had at least five thousand square feet of area and fifty feet  
20 of frontage in the case of a single-family residential use and at  
21 least seventy-five thousand square feet of area and seventy-five  
22 feet of frontage in the case of two-family residential use; and



23 (4) was not held in common ownership with any adjoining land.  
24 For the purposes of this section, common ownership shall include  
25 lots held by separate legal entities, persons or trusts under  
26 common control or with common beneficial interests.

27 (b) Lawfully Nonconforming Structures and Uses

28 (1) For the purposes of this section, a lawfully nonconforming  
29 structure or use shall be a structure or use lawfully in existence at  
30 the time of the effective date of the zoning amendment rendering  
31 such structure or use nonconforming.

32 (2) Adoption or amendment of a zoning ordinance or by-law  
33 shall not apply to lawfully nonconforming structures or uses and  
34 shall not apply to structures and uses lawfully begun prior to the  
35 first publication of notice of the public hearing on the adoption or  
36 amendment of the relevant zoning ordinance or by-law required  
37 by section five.

38 (3) A zoning ordinance or by-law may provide that, if a non-  
39 conforming use or structure is abandoned for a period of two  
40 years or more, it may not be reestablished. Abandonment shall  
41 consist of some overt act, or failure to act, which would lead one  
42 to believe that the owner neither claims or retains any interest in  
43 continuing the nonconforming structure or use, unless the owner  
44 can demonstrate an intent not to abandon it. An involuntary inter-  
45 ruption of a nonconforming structure or use, such as by fire and  
46 natural catastrophe, does not establish the intent to abandon. How-  
47 ever, if a nonconforming structure or use is halted, unused or  
48 vacated for a period of two years, the owner shall be presumed to  
49 have abandoned it.

50 (4) This subsection 6A(b) shall not apply to establishments  
51 which display live nudity for their patrons, as defined in section  
52 nine A, adult bookstores, adult motion picture theaters, adult para-  
53 phernalia shops, or adult video stores subject to the provisions of  
54 section nine A.

55 (c) Alteration, Reconstruction, Extension or Structural Change  
56 of Lawfully Nonconforming Structures and Uses

57 (1) A zoning ordinance or by-law shall not prohibit the alter-  
58 ation, reconstruction, extension, or structural change to a lawfully  
59 nonconforming single- or two-family residential structure, pro-  
60 vided there is no increase in the degree of nonconformity of the  
61 structure.

62 (2) A zoning ordinance or by-law may permit, as of right or by  
63 special permit, lawfully nonconforming structures or uses to be  
64 altered, reconstructed, extended or structurally changed provided  
65 that such actions shall not increase the degree of nonconformity of  
66 the structure or use.

67 (3) A zoning ordinance or by-law may permit, by special  
68 permit, lawfully nonconforming structures or uses to be altered,  
69 reconstructed, extended or structurally changed in a manner that  
70 increases the degree of nonconformity of the structure or use, pro-  
71 vided that the permit granting authority finds that such actions  
72 shall not be substantially more detrimental to the neighborhood  
73 than the lawfully nonconforming structure or use.

74 (4) A zoning ordinance or by-law may regulate nonconforming  
75 structures differently than nonconforming uses.

76 (5) A zoning ordinance or by-law may vary by zoning  
77 district(s) the requirements for the alteration, reconstruction,  
78 extension or structural change for all lawfully nonconforming  
79 structures and uses, except single and two-family residential struc-  
80 tures.

81 40A:6B. Vested Rights: Effective Date of Zoning Amendments

82 (a) Building Permits and Special Permits

83 (1) Adoption or amendment of a zoning ordinance or by-law  
84 shall not apply to a building permit issued or special permit  
85 granted prior to the first publication of notice of the public  
86 hearing on the adoption or amendment of the relevant zoning ordi-  
87 nance or by-law required by section five.

88 (2) The provisions of subsection 6B(a)(1) shall not apply to  
89 building permits unless construction under the permit is com-  
90 menced within six months after issuance and is carried through to  
91 completion as continuously and expeditiously as is reasonable.

92 (3) The provisions of subsection 6B(a)(1) shall not apply to  
93 special permits unless the use or construction authorized under  
94 such permit is commenced within two years.

95 (b) Subdivision Plans

96 (1) Adoption or amendment of a zoning ordinance or by-law  
97 shall not apply to a definitive subdivision plan approved prior to  
98 the first publication of notice of the public hearing on the adoption  
99 or amendment of the relevant zoning ordinance or by-law required  
100 by section five.

101 (2) The provisions of subsection 6B(b)(1) shall apply for a  
102 period of three years.

103 (c) General Provisions

104 (1) The time requirements of this section 6B shall be extended  
105 for a period of time equal to the duration of:

106 (i) any extensions granted by the applicable local board or  
107 authority;

108 (ii) the period of an appeal from the decision of any applicable  
109 local board or authority taken under applicable provisions of law  
110 on a building permit, special permit or definitive subdivision plan;  
111 and

112 (iii) any moratoria upon permitting or construction imposed by  
113 any government entity.

114 (2) The record owner of the land shall have the right, at any  
115 time, by an instrument duly recorded in the registry of deeds for  
116 the district in which the land lies, a copy of which shall be filed  
117 with the building inspector and town clerk, to waive the provi-  
118 sions of this section 6B, in which case the zoning ordinance or by-  
119 law then or thereafter in effect shall apply.

1 SECTION 9. Chapter 40A of the General Laws is hereby  
2 amended by inserting after section 7 the following section:—

3 40A:7A. Site Plan Review

4 (a) As used in this section, a “site plan” is a submission made  
5 to a municipality that includes documents and drawings required  
6 by an ordinance or by-law and used by the municipality to deter-  
7 mine whether a proposed use of land or structures is in compli-  
8 ance with applicable local ordinances or by-laws, to evaluate the  
9 effects of the proposed use of land or structures on the neighbor-  
10 hood and/or community, and to evaluate and propose site design  
11 modifications that will lessen those impacts.

12 (b) A city or town may adopt a local ordinance or by-law  
13 requiring the submission, review and approval of a site plan  
14 before authorization is granted for the use of land or structures  
15 governed by a zoning ordinance or by-law.

16 (c) Such ordinance or by-law for site plan review shall:

17 (1) establish which uses of land or structures are subject to site  
18 plan review;

19 (2) specify the local board or official charged with reviewing  
20 and approving site plans, which may differ for different types,  
21 scales, or categories of uses of land or structures;

22 (3) establish the submission and review process for a site plan  
23 which is submitted in connection with an application for a vari-  
24 ance, special permit, or other discretionary zoning approval. This  
25 submission and review may be conducted as part of the review of  
26 the application for discretionary approval or may be a separate  
27 review process under subsection (c)(4) below;

28 (4) establish the submission and review process for applications  
29 not governed by the procedures for review of discretionary zoning  
30 approval under subsection (c)(3) above, which may include the  
31 requirement of a public hearing held pursuant to the provisions in  
32 section eleven of this chapter. A decision under this subsection (4)  
33 shall require a vote by no more than a majority of the full board  
34 and shall be made within the time limits prescribed in the ordi-  
35 nance or by-law, not to exceed the time limits for special permits  
36 contained in section nine of this chapter. If no decision is issued  
37 within the prescribed time limit, the applicant shall be entitled to  
38 constructive approval of the site plan submitted as provided in  
39 section nine, paragraph eleven of this chapter;

40 (5) establish standards by which the use of land or structures  
41 and its impact on the neighborhood shall be evaluated; and

42 (6) contain provisions that make the terms, conditions, and con-  
43 tent of the site plan once approved enforceable by the munici-  
44 pality, which may include the requirement of performance  
45 guarantees.

46 (d) The local board or official charged with review of site plans  
47 may adopt, and from time to time amend, after a public hearing,  
48 rules to implement the local site plan ordinance or by-law adopted  
49 under this section. Notice of the proposed rules and of the loca-  
50 tion, date and time of the public hearing shall be filed with the  
51 city or town clerk and published in a newspaper of general circu-  
52 lation in the city or town at least fourteen days before the public  
53 hearing.

54 (e) A site plan submitted for the use of specific land or struc-  
55 tures provided in subsection (c)(4) shall be approved if the site  
56 plan:

57 (1) meets the procedural and submission requirements of the  
58 site plan review process applicable to the specific land or struc-  
59 tures;

60 (2) complies with the regulations applicable to such land or  
61 structures in the local zoning ordinance or by-law; and

62 (3) meets such standards as the local zoning ordinance or by-  
63 law provides by which the use of land or structures and its impact  
64 on the neighborhood shall be evaluated.

65 (f) A site plan approved hereunder may include reasonable con-  
66 ditions, safeguards and limitations to mitigate the impacts of a  
67 specific use of land or structures on the neighborhood.

68 (g) Decisions made under site plan review may be appealed as  
69 specified in the ordinance or by law, which may include direct  
70 judicial review pursuant to section seventeen of this chapter.

71 (h) Zoning ordinances or by-laws shall provide that a site plan  
72 approval granted under this section shall lapse within a specified  
73 period of time, not more than two years from the date of the filing  
74 of such approval with the city or town clerk, so long as substantial  
75 use or construction has not yet begun, except as extended for good  
76 cause by the approving authority designated under (c)(2) above.  
77 Such time shall not include time required to pursue or await the  
78 determination of an appeal under subsection (g) above.

1 SECTION 10. Section 9 of chapter 40A of the General Laws,  
2 as appearing in the 2000 Official Edition, is hereby amended by  
3 striking out the fourth paragraph, inserted by section 1 of chapter  
4 197 of the acts of 2002, and inserting in place thereof the fol-  
5 lowing paragraph:—

6 Zoning ordinances or by-laws may provide for the authoriza-  
7 tion of the transfer of development rights of land within or  
8 between districts. Such authorization may be by special permit or  
9 by other methods, including but not limited to the applicable pro-  
10 visions of sections eighty-one K to eighty-one GG, inclusive, of  
11 chapter forty-one and in accordance with a planning board's rules  
12 and regulations governing subdivision control.

1 SECTION 11. Section 1A of said chapter 40A, as so appearing,  
2 is hereby amended by inserting the following definition:—

3 “Development impact fees”, a contribution paid to a city or  
4 town by the person undertaking a development for the purpose of  
5 offsetting the impacts related to the development.

1 SECTION 12. Chapter 40A of the General Laws is hereby  
2 amended by inserting after section 9C the following section:—

3 40A:9D. Development Impact Fees

4 (a) Authority

5 Cities and towns may adopt ordinances and by-laws estab-  
6 lishing and governing the procedure by which they may calculate,  
7 assess and impose development impact fees on proposed develop-  
8 ments, including procedures to allow waiver or reduction of  
9 development impact fees for affordable housing developments.

10 (b) Administration

11 (1) Any development impact fee assessed under this section  
12 shall be paid to and held in a separate account in the city or town  
13 in which the proposed development is located. In the event that  
14 the proposed development is located in more than one municipi-  
15 pality, the impact fee shall be apportioned among the municipali-  
16 ties in accordance with the land area or other equitable unit  
17 measure of the impacts of the proposed development in each city  
18 or town having adopted an ordinance or by-law under this section.

19 (2) Any development impact fee imposed or permitted under  
20 this section shall comply with the following:

21 (i) The fee shall be rationally related and reasonably propor-  
22 tional to an impact directly or indirectly created by the develop-  
23 ment.

24 (ii) The purposes for which the fee is expended shall reasonably  
25 benefit the proposed development.

26 (iii) The fee shall be expended for the creation or improvement  
27 of capital facilities in accordance with a municipal plan,  
28 including, but not limited to, the creation or improvement of  
29 streets, sewers, water supplies, pollution abatement, parks,  
30 schools and similar capital facilities.

31 (3) Nothing in this section shall prevent a municipality from  
32 imposing fees or conditions which it may otherwise impose under  
33 applicable laws and constitutional provisions.

1     SECTION 13. Chapter 40A of the General Laws is hereby  
2 amended by inserting after section 9D the following section:—

3     40A:9E. Negotiated Special Permits

4     (a) Authority

5     A local zoning ordinance or by-law may provide that certain  
6 uses of land or structures may have available a negotiated special  
7 permit in accordance with the provisions of this section. The pur-  
8 pose of such negotiated special permit shall be to encourage such  
9 users of land or structures and the potentially affected community  
10 to seek to meet the particular interests of both parties in ways that  
11 other lawful measures might not provide. However, the rights of  
12 owners of land to use their land under existing rules and such  
13 powers as a city or town may otherwise have to regulate such uses  
14 of land or structures independent of this section are expressly pre-  
15 served, unless modified by a negotiated special permit granted  
16 hereunder. The denial of a negotiated special permit hereunder  
17 shall be deemed to leave unimpaired existing zoning procedures  
18 and regulations of the city or town.

19     (b) Administration

20     (1) A local zoning ordinance or by law may provide that a  
21 negotiated special permit may be granted by the special permit  
22 granting authority for the city or town under the following proce-  
23 dures.

24     (i) The owner of land or structures at issue shall file an applica-  
25 tion for a negotiated special permit pursuant to such ordinance or  
26 by-law with the special permit granting authority of the city or  
27 town. Such application shall describe the nature of the proposed  
28 use and such of its potential impacts as may be determined to be  
29 relevant for this purpose by the zoning ordinance or by-law.  
30 Thereafter the special permit granting authority shall cause notice  
31 of such application to be sent to parties in interest as hereinafter  
32 determined, and shall notice a public hearing on the negotiated  
33 special permit within sixty days of receipt of such notice.

34     (ii) Such negotiated special permit ordinance or by-law may  
35 provide for designation of parties in interest entitled to notice  
36 hereunder, which may include but need not be limited to the fol-  
37 lowing parties or their designees: (A) the municipal elected offi-  
38 cial or officials representing the district or ward in which such  
39 land or structures is to be located, (B) parties otherwise entitled to

40 notice for any special permit for the use of such land or structures  
41 if a special permit were being sought pursuant to section nine of  
42 this chapter, (C) such neighborhood organizations within such city  
43 or town as may be concerned with the effect of the use of such  
44 land or structures which an ordinance or by-law may provide may  
45 qualify for such notice by registration in a form thereby to be pro-  
46 vided, and (D) the planning board and any special permit granting  
47 authority of any abutting city or town if the use of land or struc-  
48 tures occurs within 300 feet of its municipal boundary.

49 (iii) At such public hearing, the negotiated special permit ordi-  
50 nance or by-law may provide that the applicant shall present the  
51 proposed use in more detail. The special permit granting authority  
52 shall hear such presentation, including a presentation by counsel  
53 to the special permit granting authority if it so desires, as to the  
54 municipal ordinance or by-laws otherwise applicable to the pro-  
55 posed use, and such comments as may be offered from parties in  
56 interest as previously determined and the public.

57 (iv) At the conclusion of such public hearing, the special permit  
58 granting authority may recess the hearing after appointing a  
59 review committee as provided in its negotiated special permit  
60 ordinance or by by-law including a representative or representa-  
61 tives of the applicant and such of the parties in interest hereinbe-  
62 fore determined or such other persons as the ordinance or by-law  
63 may permit or as the authority may designate, to discuss the feasi-  
64 bility of a negotiated special permit hereunder. Such review com-  
65 mittee shall be chaired by a neutral facilitator, who may be a  
66 representative of the special permit granting authority, or a medi-  
67 ator acceptable to the parties as hereinafter provided. Such recess  
68 shall be limited to ninety days from the initial hearing unless both  
69 the applicant and the special permit granting authority vote to  
70 extend the time, which extension shall not require an additional  
71 public hearing.

72 (v) The review committee shall then determine if there are  
73 modifications from the otherwise applicable zoning ordinance that  
74 would serve the interest of the applicant as well as conditions on  
75 the grant of a negotiated special permit that would serve the inter-  
76 ests of abutters, and other parties in interest as hereinbefore deter-  
77 mined or other third party interests affected by the project. Such  
78 matters as may be discussed, and made the subject of conditions



79 of the negotiated special permit, shall be as such local negotiated  
80 special permit ordinance or by-law may provide, but may include:

81 (A) bulk and height of structures, yard sizes, lot area, frontage,  
82 setbacks, open space, parking, floor area, floor area ratio and  
83 building coverage requirements, which may be made more favor-  
84 able to the applicant user of land or structures than would other-  
85 wise be applicable under local ordinances or by-laws absent this  
86 negotiated special permit;

87 (B) mitigation of possible impacts of the use subject to the  
88 negotiated special permit approval, including, but not limited to  
89 the following aspects as long as they are not otherwise subject to  
90 review by other local agencies other than the special permit  
91 granting authority hereunder; provided, however, that the special  
92 permit granting authority hereunder is authorized to grant such  
93 permission as would otherwise be required from a “local board”  
94 as defined in section twenty of chapter forty B as therein pro-  
95 vided:

96 (1) traffic management and parking, including traffic demand  
97 management and alternative transportation modes, driveway  
98 access and design to assure convenient and safe movement for  
99 vehicles and pedestrians as well as off-street loading and  
100 unloading of vehicles servicing buildings on the site;

101 (2) aspects relating to public health, such as waste disposal;

102 (3) surface water drainage;

103 (4) aspects related to visual quality, including lighting,  
104 screening of parking areas and structure(s) on the site from  
105 adjoining premises or from the street by from lighting or sound by  
106 walls, fences, plantings, or other means;

107 (5) avoidance of major topographic changes, including tree and  
108 soil removal;

109 (6) under-grounding of utility lines;

110 (7) site design and layout, including the location and configura-  
111 tion structures and relationship of the site’s structures to nearby  
112 structures in terms of major design elements, including scale,  
113 materials, color, roof, and cornice lines, as well as landscaping;

114 (8) avoidance of removal or disruption of historic resources on  
115 or off-site, including designated historical structures or sites, his-  
116 torical architectural elements or archeological sites;

117 (9) conditions of construction or operations to mitigate the  
118 impact of aspects hereinbefore identified or external effects not  
119 hereinbefore identified of either construction or operation of the  
120 facility subject to the negotiated special permit, including but not  
121 limited to hours of operation, noise control, on-site supervision,  
122 manual traffic control, limits of work, and so forth, as such local  
123 negotiated special permit ordinance or by law may provide, as  
124 well as provision for guarantees for performance, including but  
125 not limited to bonds or other security;

126 (10) impact fees or payment in lieu of taxes to offset the burden  
127 of public services required; and

128 (11) if appropriate to the use proposed, a low and moderate  
129 income housing component.

130 (vi) A negotiated special permit ordinance or by-law may pro-  
131 vide that the meetings of the review committee may be convened  
132 with the assistance of a neutral facilitator or a mediator, as defined  
133 in section twenty-three C of chapter two thirty-three, with costs of  
134 such facilitator or mediator to be paid by the applicant subject to  
135 negotiated special permit review or as the parties in interest may  
136 otherwise agree. Such review may include caucuses by the facili-  
137 tator or mediator with participants which need not be subject to  
138 the provisions of section twenty-nine B of chapter thirty-nine.

139 (vii) If the review committee shall not complete its work so as  
140 to produce a recommended form of negotiated special permit  
141 within the recess period specified in subsection (iv), then the  
142 negotiated special permit shall be deemed denied and the appli-  
143 cant shall have such rights as are hereinafter provided. If the  
144 review committee has completed its work within such recess  
145 period so as to produce a recommended form of negotiated special  
146 permit, then the applicant may proceed to file the negotiated spe-  
147 cial permit with the special permit granting authority. The  
148 authority may then deny, amend or approve such negotiated spe-  
149 cial permit as it deems advisable as if it were a special permit pur-  
150 suant to section nine of this chapter, provided that failure to so act  
151 within ninety days, or such additional time as the applicant may  
152 agree, of the date of filing of such negotiated special permit shall  
153 be deemed constructive approval. If the negotiated special permit  
154 is amended or denied, then the applicant shall have all pre-  
155 existing rights absent the provisions of a negotiated special permit

156 or by law, including the right to apply for a building permit, vari-  
157 ance or special permit as such other statutes, local ordinances or  
158 by law shall permit.

159 (viii) If such a negotiated special permit is approved, a zoning  
160 ordinance or by law providing a negotiated special permit here-  
161 under shall allow the user of land or structures seeking such nego-  
162 tiated special permit to withdraw its application for a negotiated  
163 special permit without prejudice at any time up to and until any  
164 appeal period has expired and to rely on its rights under otherwise  
165 applicable local ordinances or by-law. After such appeal period  
166 has run, however, any negotiated special permit granted pursuant  
167 to a negotiated special permit ordinance or by-law shall be  
168 binding on the applicant and its successors in interest in the same  
169 way as a special permit issued pursuant to section nine of this  
170 chapter.

171 (ix) A negotiated special permit granted hereunder may be  
172 appealed by other than the applicant so long as appellant is a party  
173 with standing to appeal as if the negotiated special permit were  
174 granted under section nine of this chapter, provided that such  
175 appeal shall not supercede the right of the applicant to withdraw  
176 the negotiated special permit application as provided above.

177 (x) Nothing herein shall be construed to limit the effect or  
178 scope of any local ordinance or by-law otherwise applicable to the  
179 applicant absent a negotiated special permit incident to a negoti-  
180 ated special permit ordinance or by-law hereunder.

1 SECTION 14. Section 17 of chapter 40A of the General Laws,  
2 as appearing in the 2000 Official Edition, is hereby amended by  
3 inserting after the seventh paragraph the following paragraph:—

4 Mediation of land use appeals: After the filing of an appeal  
5 hereunder, the parties may agree to mediate the decision that was  
6 appealed. In all events, the parties shall file a statement advising  
7 the court in which such appeal was filed that the dispute has been  
8 considered for mediation, and if they agree to mediation, such  
9 mediation shall begin within sixty days of the date such statement  
10 was filed, or such other period as the parties may agree or the  
11 court may allow upon application by any party. Such mediation  
12 shall conclude not more than one hundred and eighty days of such  
13 filing, provided that such period may be extended for an addi-

14 tional one hundred and eighty days upon mutual agreement of the  
15 parties, or for such additional period as the court may allow upon  
16 application by any party. Mediators may be chosen by the parties  
17 from a list to be provided by the court in which the appeal was  
18 filed or from a list compiled by the parties. The mediator shall be  
19 compensated by the parties as they may agree, or under terms  
20 approved by the court as a cost of such appeal as hereinafter pro-  
21 vided. During such mediation, however, any appeal otherwise  
22 pending is stayed. A party may withdraw from mediation at any  
23 time after written notification to the other parties and to the court  
24 in which such appeal was filed, but shall remain responsible for  
25 that party's share of the costs of mediation until the time of with-  
26 drawal. The mediator shall have the protections provided under  
27 section twenty-three C of chapter two hundred and thirty-three,  
28 and to the extent that public agencies are participants in such  
29 mediations, their deliberations shall not be subject to the provi-  
30 sions of section twenty-nine B of chapter thirty-nine. At the con-  
31 clusion of such mediation, the mediator shall file with the court a  
32 statement describing whether the parties have come to agreement  
33 or not. If unresolved, the appeal will then go forward, and if the  
34 matter has been resolved, the appeal will be dismissed with preju-  
35 dice. The cost of mediation will be distributed among the parties  
36 as costs of the appeal as the parties may agree and if not, as the  
37 court in which such appeal was filed may determine. Mediation  
38 hereunder shall not be the only method of resolving a zoning  
39 appeal.

1 SECTION 15. Section 81D of said chapter 41, as so appearing,  
2 is hereby amended by striking out the first sentence in the twelfth  
3 paragraph and inserting in place thereof the following words:—  
4 Such plan shall be made, and may be added to or changed from  
5 time to time, by a majority vote of such planning board after a  
6 public hearing in accordance with section five of chapter forty A  
7 and a later two-thirds majority vote of the legislative body of the  
8 city or town after a public hearing in accordance with section five  
9 of chapter forty A. For towns with a town meeting form of gov-  
10 ernment, the vote of the legislative body shall be without amend-  
11 ment except for minor technical corrections. For cities, the vote of  
12 the legislative body shall be after such amendment as the city

13 council or board of aldermen may deem appropriate. Upon adop-  
14 tion the plan shall be public record.

1 SECTION 16. Section 81L of chapter 41 of the General Laws,  
2 as appearing in the 2000 Official Edition, is hereby amended by  
3 striking out, in lines 52-78 inclusive, the definition of “Subdivi-  
4 sion” and inserting in place thereof the following definition:—

5 “Subdivision” shall mean the division of a tract of land into one  
6 or more lots and shall include resubdivision. When appropriate to  
7 the context, subdivision shall include the process of subdivision or  
8 the land or territory subdivided. Except as provided in this  
9 chapter, any adjustments to existing lot lines of a recorded lot by  
10 any means shall be considered a subdivision. Lot area and  
11 frontage shall be of at least such dimension as is then required by  
12 zoning or other ordinance or by-law, if any, of said city or town  
13 for erection of a building on such lot. If no such dimensions are so  
14 required, such area shall be at least five thousand square feet and  
15 such frontage shall be at least fifty feet.

1 SECTION 17. Section 81O of said chapter 41, as so appearing,  
2 is hereby amended by striking out the second sentence in the first  
3 paragraph and inserting in place thereof the following sentence:—  
4 After the approval of a plan the location and width of ways, or the  
5 number, shape, and size of the lots shown thereon shall not be  
6 changed unless the plan is amended accordingly under section  
7 eighty-one W, except that the planning board may adopt alternate  
8 rules and regulations under sections eighty-one P and eighty-one  
9 Q of this chapter defining and regulating changes to the number,  
10 shape, and size of the lots shown thereon as minor subdivisions.

1 SECTION 18. Said chapter 41, as so appearing, is hereby  
2 amended by striking out section 81P and inserting in place thereof  
3 the following section:—

4 41:81P. Alternative Approvals for Minor Subdivisions

5 Under section eighty-one Q, a planning board may adopt rules  
6 and regulations defining and regulating minor subdivisions in a  
7 more expeditious manner than would apply to other subdivisions.  
8 Such rules and regulations may establish reduced procedural  
9 requirements, review periods, fee schedules, performance guaran-

10 tees, and construction and design standards than would otherwise  
11 apply.

1 SECTION 19. Section 81T of said chapter 41, as so appearing,  
2 is hereby amended by striking out, in lines 2-3 inclusive, the fol-  
3 lowing words “or for a determination that approval is not  
4 required”.

1 SECTION 20. Section 81X of said chapter 41, as so appearing,  
2 is hereby amended by striking out, in lines 12-13 inclusive, the  
3 following words “such plan bears the endorsement of the planning  
4 board that approval of such plan is not required, as provided in  
5 section eighty-one P, or (3)”.

1 SECTION 21. Section 81X of said chapter 41, as so appearing,  
2 is hereby further amended by striking out, in lines 17-20 inclu-  
3 sive, the following words “or that it is a plan submitted pursuant  
4 to section eighty-one P and that it has been determined by failure  
5 of the planning board to act thereon within the prescribed time  
6 that approval is not required,”.

1 SECTION 22. Section 81X of said chapter 41, as so appearing,  
2 is hereby further amended by striking out the fourth paragraph and  
3 inserting in place thereof the following paragraph:—

4 Notwithstanding the foregoing provisions of this section, the  
5 register of deeds shall accept for recording and the land court shall  
6 accept with a petition for registration or confirmation of title any  
7 plan bearing a certificate by a registered land surveyor that 1) the  
8 property lines shown are the lines dividing existing ownerships,  
9 and the lines of streets and ways shown are those of public or pri-  
10 vate streets or ways already established, and that no new lines for  
11 division of existing ownership or for new ways are shown, or 2)  
12 unless subject to section eighty-one O of this chapter or subject to  
13 alternate rules and regulations under sections eighty-one P and  
14 eighty-one Q of this chapter, the property lines shown do not  
15 create a new lot or render an existing lot nonconforming or more  
16 nonconforming. The recording of such plan shall not relieve any  
17 owner from compliance with the provisions of the subdivision  
18 control law or of any other applicable provision of law.

1     SECTION 23. Section 81M of said chapter 41, as so appearing,  
2 is hereby amended by inserting, after the word “systems”, in the  
3 third sentence, the words:— , and for a plan adopted by the city or  
4 town under section eighty-one D of this chapter.

1     SECTION 24. Section 81O of said chapter 41, as so appearing,  
2 is hereby amended by striking out the second paragraph and  
3 inserting in place thereof the following paragraph:—

4     A plan shall be deemed submitted under this section at the next  
5 regularly-scheduled meeting of the planning board provided it is  
6 1) sent by registered mail or delivered to the planning board and  
7 received by said board seven days prior to said meeting, and 2)  
8 determined to be complete by the board or their designee at said  
9 meeting in accordance with the planning board’s rules and regula-  
10 tions.

1     SECTION 25. Section 81Q of said chapter 41, as so appearing,  
2 is hereby amended by inserting after the first paragraph the fol-  
3 lowing paragraphs:—

4     Notwithstanding anything to the contrary in this section, a plan-  
5 ning board may adopt a rule or regulation that a plan for a residen-  
6 tial subdivision show a lot or lots that shall be reserved for the  
7 required construction by the applicant of dwelling units affordable  
8 to persons whose household income does not exceed a percentage  
9 of the area median income, as such income is determined by the  
10 federal Department of Housing and Urban Development. Such  
11 requirements shall not exceed fifteen percent of the dwelling units  
12 within the subdivision. In lieu of the construction of the required  
13 affordable dwelling units within a subdivision, a planning board  
14 rule or regulation may allow for the construction of such units off-  
15 site, the dedication of land for such purpose, or the payment of  
16 sufficient funds to a separate account created by the city or town  
17 for such purpose. Cities and towns are hereby empowered to  
18 establish said separate accounts to be administered by the trea-  
19 surer of the city or town.

20     Rules and regulations adopted or amended under this chapter  
21 shall not be inconsistent with a plan prepared under section  
22 eighty-one D of chapter 41. Said rules and regulations shall pro-  
23 vide that in the instance of uncertainty in the construction or

24 application of any section therein, the rules and regulations shall  
25 be construed in a manner that will further the implementation of,  
26 and not be contrary to, the goals, policies and applicable elements  
27 of said plan. This paragraph shall not become effective until five  
28 years after it is enacted in the General Laws.

1 SECTION 26. Section 81Q of said chapter 41, as so appearing,  
2 is hereby amended by striking out, in lines 62-69 inclusive, the  
3 words “No rule or regulation shall require, and no planning board  
4 shall impose, as a condition of approval of a subdivision, that any  
5 of the land within said subdivision be dedicated to the public use,  
6 or conveyed or released to the commonwealth or to the county,  
7 city or town in which the subdivision is located, for use as a  
8 public way, public park or playground, or for any other public  
9 purpose, without just compensation to the owner thereof.” and  
10 inserting in place thereof the following words:— The rules and  
11 regulations may require the plan to show a park or parks suitably  
12 located for playground or recreation purposes or for providing  
13 light and air and not unreasonable in area in relation to the area of  
14 land being subdivided and the prospective uses of such land.

1 SECTION 27. Section 81U of said chapter 41, as so appearing,  
2 is hereby amended by striking out, in lines 174-175 inclusive, the  
3 words “for a period of not more than three years”.

1 SECTION 28. Section 81U of said chapter 41, as so appearing,  
2 is hereby amended by inserting, after the word “applicant”, in line  
3 79, the words “, subject to the discretion and approval of the plan-  
4 ning board:”.

1 SECTION 29. Regional Policy Plans.

2 Each RPA shall develop a RPP or revise or modify existing  
3 RPPs developed in accordance with Chapter 40B. Any and all  
4 revisions or modifications of existing RPPs, or the development of  
5 new RPPs, must include the establishment of goals and objectives  
6 in each of the following areas: housing; land resources; land use;  
7 transportation; economic development; water resources; and cap-  
8 ital investment and infrastructure.

9 (1) Required Elements of RPP.



10 Each RPA shall address within its RPP, the elements described  
11 in subsection (c) pertaining to Local Comprehensive Plans. Each  
12 RPA shall adapt said elements to the regional level of government.

13 (2) Optional RPP Elements.

14 There are four optional elements that may be included in an  
15 RPP. They are:

16 (i) Regional buildout projection and analysis;

17 (ii) Regional infrastructure, inventory, assessment and capital  
18 improvements program (if appropriate);

19 (iii) regional sustainability indicators and reporting element;

20 (iv) intergovernmental coordination element.

21 (3) Public Participation and RPP Development.

22 In developing RPPs under the provisions of this Act, the RPA  
23 shall employ an open, inclusive, and broadly participatory process  
24 in the same manner as is required of municipalities under subsec-  
25 tion (c) of this section. RPAs may jointly establish uniform proce-  
26 dures under this section. RPPs shall cooperate with the Office of  
27 Geographic and Environmental Information and utilize the geo-  
28 graphic information system in the preparation of RPPs.

29 Regional public notification and participation procedures shall  
30 ensure widespread public participation in the RPP planning  
31 process including, but not limited to: each municipality within the  
32 RPA; abutting RPA communities and the applicable RPA; busi-  
33 nesses and industry; environmental and public health groups; local  
34 government officials; watershed area representatives; conservation  
35 commissions; RPPs; and representatives of State agencies and  
36 departments.

37 Each RPA shall conduct at least one public hearing or meeting  
38 to solicit comments and input on the notification and public par-  
39 ticipation procedures required under this subsection.

40 (4) Timing of RPPs.

41 Development of an RPP by an RPA shall be initiated and com-  
42 pleted as soon as possible after the effective date of this Act.  
43 Under no circumstances, shall the failure of an RPA to initiate  
44 and/or complete an RPP impede or prevent the ability of a munici-  
45 pality to develop a Plan under this Act.

46 A municipality that has completed a Plan within the five years  
47 prior to the effective date of this Act, is authorized to review and  
48 amend the Plan to satisfy the provisions of this Act.

49 (5) RPP Review, Approval, and Certification.

50 RPPs shall be subjected to a self-certification review and  
51 approval process that shall provide that if an RPP is approved by a  
52 simple majority vote of the applicable RPA membership, the RPA  
53 shall be authorized to approve and certify the RPP as complete.

54 (6) Funding Support for RPP Planning.

55 In order to comply with the provisions of this Act pertaining to  
56 RPAs, funding for complying with said provisions shall be in  
57 accordance with the following formula: base funding of \$100,000  
58 per year per RPA, plus .70 cents per capita based upon the most  
59 recent U.S. Census data on population.

60 (1). State Requirements.

61 (1) State Sustainable Capital Spending Plan.

62 (i) Each agency of the Commonwealth shall develop a State  
63 Sustainable Capital Spending Plan (State Spending Plan) that is  
64 consistent with the elements required of Local Comprehensive  
65 Plans and with RPPs. The agencies that shall develop said plan  
66 shall include, but not be limited to: the Governor or his/her  
67 designee of the Executive Offices of Environmental Affairs;  
68 Department of Education; Transportation and Construction;  
69 Health and Human Services; Public Safety; Elder Affairs; Divi-  
70 sion of Energy Resources; Administration and Finance; the com-  
71 missioner or his/her designee of the Division of Capital Asset  
72 Management; the director or his/her designee of the Division of  
73 Housing and Community Development; the executive directors or  
74 their designees of the Massachusetts Port Authority; Massachu-  
75 setts Water Resources Authority; Massachusetts Bay Transporta-  
76 tion Authority; and the Massachusetts Turnpike Authority.

77 (ii) State Goals.

78 To concentrate on existing or planned infrastructure in areas  
79 that are environmentally suitable for development;

80 To protect, to the maximum extent possible, environmentally  
81 sensitive lands, natural resources, wildlife habitats, and cultural,  
82 natural, and historic landscapes;

83 To encourage the reuse and revitalization of existing infrastruc-  
84 ture rather than the construction of new infrastructure in undevel-  
85 oped areas;

86 To revitalize existing downtown areas in our cities, towns, and  
87 villages;

88 To protect and enhance resource-based industries and land-pro-  
89 tective forms of economic development, such as agriculture,  
90 forestry, fishing, tourism, and recreation; and

91 To ensure that permitting, funding, and construction activities  
92 by state agencies do not enable, contribute to, or perpetuate  
93 sprawl.

94 (iii) Consistency with Plans and RPPs.

95 State agencies shall ensure that their state capital spending  
96 plans are consistent with Local Comprehensive Plans that are Cer-  
97 tified in accordance with subsection (f) of this section, and with  
98 RPPs approved and certified in accordance with subsection (j) of  
99 this section. This provision requiring that each state capital  
100 spending plan be consistent with Local Comprehensive Plans and  
101 with RPPs shall not apply where the Governor has certified that  
102 there is an overriding public interest in implementing an inconsis-  
103 tent state capital spending plan or any of its provisions.

1 SECTION 30. The provisions of Sections 1-28 herein shall not  
2 be construed to affect any general or special law other than the  
3 provisions of chapters 40A and 41 therein revised.

1 SECTION 31. Chapter 40B of the General Laws, as appearing  
2 in the 1998 Official Edition, is hereby amended by adding the fol-  
3 lowing section after Section 5(b):—

4 Section 5(c). Sustainable Development Act.

5 “Any regional planning entity established under this Chapter  
6 shall be granted the powers and duties necessary to implement the  
7 relevant provisions of Chapter 41, Section 81D.”